

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
Petition of Community Hospital	)	WC Docket No. 02-60
Corporation; Yoakum Community	)	
Hospital; and Saint Mark's Medical Center	)	
for Waiver of	)	
§ 54.603	)	
	)	

**PETITION FOR RETROACTIVE WAIVER**

**Introduction and Executive Summary**

Pursuant to Section 1.3 of the Federal Communications Commission's ("FCC" or the "Commission") rules,<sup>1</sup> Community Hospital Corporation ("CHC"), Yoakum Community Hospital ("YCH"), and Saint Mark's Medical Center ("St. Mark's") (collectively, the "Petitioners") respectfully requests that the Commission grant them a waiver of Section 54.603 of the Commission's rules (the "Competitive Bidding Rule")<sup>2</sup> in order to permit Petitioners to select a replacement Service Provider for the services currently being offered by Network Services Solutions, LLC ("NSS"). In the alternative, Petitioners request that the Commission grant them a temporary emergency 90-day waiver of the FCC's Competitive Bidding Rules so that they may complete the formal competitive bidding process and ensure continuity of service for Petitioners.

As set forth herein, good cause exists to grant a waiver or, in the alternative, a temporary waiver, of the Competitive Bidding Requirement in this case. A waiver is essential to ensuring the continuity of critical and essential telecommunications services used by Petitioners.

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<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> 47 C.F.R. § 54.603.

## **I. Factual Background**

### **A. Petitioners**

#### **1. CHC (HCP 33838)**

CHC was established in 1996 and is headquartered in Plano, Texas. CHC's sole mission is to help not-for-profit hospitals remain community-operated and governed. CHC provides the resources and experience community hospitals need to improve quality outcomes, patient satisfaction and financial performance.

CHC offers a number of comprehensive services that are designed to benefit community hospitals in four key areas – operational performance, financial strength, strategic vision and regulatory compliance. Specifically, CHC offers community hospitals the following core services: ownership models, management services, and consulting services. CHC has an ownership interest in three rural/community hospitals, one tertiary hospital, and eleven long term acute care hospitals and provides management and consulting services to over one hundred hospital clients. With regard to ownership models, CHC created and offers two distinct ownership models, one for privately held hospitals and one for publicly governed hospitals.

With respect to this Petition, CHC participated in the Rural Health Care Program ("RHC Program") as a consortium to procure funding and services for consortium members, YCH, St. Mark's, and the Beaumont, Texas branch of Baptist Hospitals of Southeast Texas (HCP 35987). In addition, the CHC corporate office (HCP 33584) and data center (HCP 39333) likewise received funding through the CHC Consortium.

## **2. Yoakum Community Hospital (HCP 14035)**

YCH has provided healthcare to the community of Yoakum, Texas since 1922. The 25-bed facility operates as a not-for-profit hospital and is managed by CHC. YCH's patients benefit from the latest medical technology along with comprehensive healthcare delivered by highly skilled physicians, nurses and professional staff. YCH's dedication to providing comprehensive healthcare with compassion, dignity and respect demonstrates its standard of quality care and superior service to its community. YCH is designated as the only Level IV trauma center in the area and provides a broad range of inpatient and outpatient services to meet the evolving health care needs of the surrounding community, which includes laboratory, rehabilitation, imaging, emergency, general medicine, diabetes education, treatment for sleep disorders, surgery and the many medical specialists who schedule patient appointments at the YCH Outpatient Clinic.

## **3. St. Mark's (HCP 18328)**

St. Mark's is a 65-bed, 100,000-square foot not-for-profit hospital providing Advanced Healthcare Close to Home for patients in the central Texas communities of Fayette and Lee Counties, as well as the surrounding areas. St. Mark's provides patients with comprehensive health services, advanced technologies and medical specialists that rival those of major metropolitan institutions. St. Mark's maintains a clinical affiliation with St. David's HealthCare in Austin and is the proud recipient of the TMF Health Quality Institute Silver Award, exemplifying its dedication to continuous quality improvement. St. Mark's is a part of the CHC family of hospitals.

### **B. Petitioners' Rural Health Care Participation and Bid Evaluation**

In or around May 2011, Petitioners began evaluating their telecommunications needs and resources and elected to participate in the RHC Program administered by the Universal Service

Administrative Company (“USAC”). To this end, Petitioners applied to become eligible Health Care Providers (“HCP”) and each submitted a Form 465 for Funding Year 2011.<sup>3</sup> Specifically, Petitioners sought to obtain RHC Program support for necessary Internet and telecommunications services to be used for medical purposes, including, but not limited to, bandwidth for general Internet connectivity and data circuits for sending and receiving medical billing information, files and/or images to and from remote locations, addressing medical administration issues, and telemedicine. Specifically, Petitioners wished to implement a MPLS network solution to help address their telecommunications needs. As set forth above, CHC became an HCP as a consortium and applied for funding on behalf of its members. In addition, YCH and St. Mark’s individually applied for and became HCPs and likewise sought funding. All requested funding related to the central aim of creating a network solution to address their collective needs.

Petitioners received proposals from three different service providers: NSS, TeleQuality, and XO Communications. When reviewing the bids/proposals, Petitioners employed a selection/decision matrix document.

Petitioners determined that the proposal provided by TeleQuality was substantially more expensive than those proposed by both NSS and XO Communications. Petitioners did not award the contract to TeleQuality for that reason. When making a determination between the proposals provided by NSS and XO Communications, Petitioners compared a variety of factors and worked with USAC Analyst, Debbi Robinson, to determine the best option.

XO Communications provided the lowest priced network. However, one of the conditions of awarding the contract was that the network solution had to be provided on a Tier 1 provider’s

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<sup>3</sup> Petitioners continued to submit Forms 465 each year, until each were granted “evergreen status” by USAC. Subsequently, Petitioners submitted Forms 466 and 477 each year, as required.

backbone. Petitioners learned that XO Communications is a Tier 2 provider that relies on paid peering contracts with other carriers.<sup>4</sup> Thus, Petitioners eliminated XO Communications from consideration.

Ultimately, Petitioners were not confident that XO Communications was capable of delivering a fully meshed, dedicated, high capacity connection to not only the currently proposed locations, but also all potential markets into which they anticipated expanding. Petitioners also required assurances that a packet leaving Dallas, Texas on the ISP's backbone could and would be delivered to Artesia, New Mexico, Yoakum, Texas, or any rural area in the U.S. on that same backbone. If a provider is in a leasing or peering agreement, it cannot maintain the quality of the product and is subsequently at the mercy of whoever is supplying it. Similarly, Petitioners needed assurances that the ISP selected would support and maintain its backbone from end to end. Based on these specific concerns and further reasons highlighted in the matrix provided to USAC, Petitioners' selection committee felt XO Communications did not meet the necessary criteria.

As part of its selection process, Petitioners also considered the financial stability of all the underlying carriers that submitted information. Petitioners discovered that XO Communications had experienced bankruptcy in the preceding ten years. Only NSS and TeleQuality featured services from underlying carriers in Fortune 500 organizations (CenturyLink-344 and AT&T-12). They were given favorable consideration compared to XO Communications, which was not a Fortune 500 organization. Given all these findings and concerns, doing business with XO Communications seemed to be a high risk. In the end, after considering all of the above factors,

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<sup>4</sup> Petitioners determined that use of a Tier 1 provider was necessary given their regional and national expansion plans, as well as the general financial stability of Tier 1 carriers as opposed to Tier 2 or 3 carriers.

Petitioners determined that NSS was best positioned to provide for their immediate network need and potential network growth. Petitioners and NSS executed service contracts on or around August 11, 2011. From 2011 through the present, NSS utilized CenturyLink, Inc. (“CenturyLink”) as its underlying provider in order to provide services to Petitioners.

### **C. Current Status**

On November 4, 2016, the Commission issued a Notice of Apparent Liability against NSS and charged the company with violating the Commission’s competitive bidding requirements, inflating charges, forgery, bribery and federal wire fraud. The Commission proposed a staggering forfeiture of over \$21 million against NSS for its egregious misconduct.<sup>5</sup>

Over the past eighteen months, Petitioners have seen a dramatic decline in the support provided by NSS and have experienced a number of outages. NSS apparently removed Petitioners from its automatic outage notifications.<sup>6</sup> Further, NSS’s response times to outages and service issues is unacceptable, and NSS refuses to provide information as to the causes of the service outages. As a result, Petitioners often must work with NSS’s subcontractor, CenturyLink, directly in order to resolve technical issues.

For example, during the most recent outage which occurred on January 25, 2017, all five of Petitioners’ CenturyLink circuits managed by NSS went down simultaneously. Petitioners contacted NSS immediately to open a trouble ticket. The first update from NSS came an hour after the trouble ticket was opened and provided no reason for the outage or any estimate of service restoration. Petitioners received the second and last update over an hour after the first update,

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<sup>5</sup> *In the Matter of Network Services Solutions, LLC, Scott Madison*, Notice of Apparent Liability for Forfeiture and Order, File No. Eb-IHB-15-0001913, Rel. Nov. 4, 2016 (“NSS NAL”).

<sup>6</sup> Petitioners had been set up on an automatic alert system regarding notifications or outages. These notifications allowed CHC to know when there was an issue with a circuit, which in turn allowed CHC to respond to circuit trouble and/or outages immediately.

which also provided nothing in the way of guidance. To date, NSS has never provided Petitioners with a reason or cause for the outage or even a notice that service has been restored. After receiving no assistance from NSS, Petitioners contacted CenturyLink and several CenturyLink partners to see what could be done to restore service as quickly as possible. Petitioners received verbal confirmation from a CenturyLink representative that the outage was due to non-payment by NSS. Petitioners are attempting to obtain written verification of the same from NSS.

After experiencing inconsistent service quality from NSS for approximately six months, St. Mark's and YCH elected to initiate a competitive bidding process in order to secure funding to procure services from a new provider that would, in turn, help facilitate the eventual migration away from NSS. Both entities submitted Forms 465 in or around January 2016. However, neither St. Mark's nor YCH received any responsive proposals. Thus, after conducting additional research and due diligence, they contacted Hot Spot Broadband (dba Sky Fiber Internet) to investigate whether that company could provide an adequate solution. St. Mark's and YCH eventually entered into a contract with Hot Spot Broadband in or around December 2016. Both entities sought to have FY 2016 funding applied, but learned that all FY 2016 had been used. If necessary, Petitioners are prepared to enter into a new bidding process for FY 2017, but they still require a solution to be in place in the interim.

Given the severe service quality issues, the risk of continuing outages, and the financial and legal issues facing NSS, Petitioners intend to terminate their contract with NSS. While Petitioners are currently working with CenturyLink to arrive at an emergency and interim solution, they need to implement a replacement to NSS as soon as possible in order to avoid future outages and ensure continuity of critical services. Petitioners do not anticipate that CenturyLink will continue to service the circuits given the current situation. Hot Spot Broadband has determined

that it can create a temporary solution that would prevent Petitioners from losing network connectivity until such time as a permanent solution can be achieved. However, in order to roll out this temporary solution, Petitioners require a waiver of the competitive bidding process. Otherwise, Petitioners remain at the mercy of NSS and fully expect additional outages to occur in the very near term.

## **II. Legal Background – The Rural Health Care Program and Bidding Requirements**

The federal RHC ensures that eligible HCPs pay the same amount for telecommunications services as their urban counterparts. Through this program, financial support is provided to eligible rural HCPs “so that all health care facilities—regardless of whether they are located in a rural or urban area—can implement the modern telecommunications systems that are vital to 21st century medical care.”<sup>7</sup>

HCPs participating in the RHC Program apply for Universal Service Fund (“USF”) support for eligible services by making a bona fide request for services from telecommunications companies. This is accomplished through a competitive bidding process for services eligible for support. In so doing, HCPs must adhere to applicable state, local, or other procurement requirements.<sup>8</sup> To make the required bona fide request for bids in connection with the RCH Program, HCPs prepare and transmit to USAC a Form 465, which USAC then posts on its website for telecommunications carriers to review.<sup>9</sup> An HCP submits one Form 465 per funding year for all services for which it is seeking bids. Each funding year begins on July 1 and ends June 30.

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<sup>7</sup> See NSS NAL at ¶ 4; *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd. 8776, 8796, para. 35 (1997); see also 47 CFR § 54.602.

<sup>8</sup> 47 CFR §§ 54.602, 54.603, 54.615.

<sup>9</sup> 47 CFR § 54.603.



HCPs use the Form 465 to detail their anticipated service requirements, as well as other information about their service needs.

In response to the Form 465, interested service providers submit bids to the HCPs. HCPs are required to review all submitted bids and wait at least 28 days before “making commitments” with the selected service provider.<sup>10</sup> The earliest date on which HCPs can enter into agreements with the selected service provider, *i.e.*, the 29th day after the Form 465 is posted, is the Allowable Contract Selection Date (“ACSD”).

The Commission’s rule requires that HCPs choose the most cost-effective service provider, which is the “method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the health care provider deems relevant to choosing a method of providing the required health care services.”<sup>11</sup> Once the HCP selects the most cost-effective service provider and enters into a service contract, the HCP conveys this selection to USAC by filing the Form 466, which also serves as the HCP’s request for support payments from the USF.<sup>12</sup> USAC uses the Form 466, along with the supporting documentation and information that applicants submit, to determine, among other things, the appropriate support payments from the Fund.<sup>13</sup> USAC reviews the applicant’s Form 466 with accompanying documentation and information, the service contract entered into between the HCP and service provider, and any

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<sup>10</sup> 47 CFR § 54.603(b)(3).

<sup>11</sup> 47 CFR § 54.603(b)(4).

<sup>12</sup> See Health Care Providers Universal Service, Funding Request and Certification Form, OMB 3060-0804.

<sup>13</sup> See Form 466; USAC, Rural Health Care, Telecommunications Program, Health Care Providers, Step 4: Submit Funding Requests, <http://www.usac.org/rhc/telecommunications/health-care-providers/step04/default.aspx>.

competing bids and issues funding commitment letters informing the HCP whether the application has been approved or denied.<sup>14</sup>

### **III. Argument**

As illustrated above, Petitioners undertook great care and deliberation in selecting NSS as their Service Provider. However, through no fault of its own, Petitioners are faced with the immediate threat of losing critical telecommunications and Internet access services as a direct result NSS's misconduct and its legal and financial issues.

It is abundantly clear, that Petitioners, along with USAC and hundreds of other HCPs, put their trust in NSS based on its long history of providing services to HCPs across the country. Indeed, the FCC noted that NSS has received more than \$38,000,000 in USF distributions since 2006 and "is one of the largest recipients of USF funding in the [Rural Health Care Program.]"<sup>15</sup> Further, the FCC noted that the NSS NAL was the *first* enforcement action involving the RHC Program and the *first time* the Commission has proposed a fine for wire fraud in connection with a USF Program.<sup>16</sup>

Thus, Petitioners find themselves in an untenable situation caused solely by NSS. Petitioners are victim of NSS's fraudulent conduct. As a result of this most unfortunate predicament, Petitioners are unable to timely comply with the Commission's competitive bidding rules and have no other viable option but to seek a waiver of the same. Failure to grant the waiver would result in grave consequences for Petitioners and the patients they serve.

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<sup>14</sup> *Id.*

<sup>15</sup> NSS NAL at ¶ 16.

<sup>16</sup> See FCC Nov. 4, 2016 News Release, available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-342036A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-342036A1.pdf)

## **A. Standard for Seeking a Waiver**

Section 1.3 of the Commission's rules provide that:

The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission ***on its own motion or on petition if good cause therefor is shown.***<sup>17</sup>

The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>18</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>19</sup> Waiver of the Commission's rules is appropriate where (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.<sup>20</sup> In such instances "good cause" exists to grant a waiver.

## **B. Application to Petitioners**

This Petition meets the criteria to justify the Commission's waiver. There can be no doubt that granting a waiver in this instance would be in furtherance of the public interest. Specifically, waiving the competitive bidding rule is the only mechanism by which to ensure that Petitioners – award winning community and rural healthcare providers – continue to receive critical communications services needed: (1) to provide quality healthcare and administrative support services to their patients; (2) to provide educational services to staff and patients; and (3) to maintain efficient and modern back-office support. Continued interruptions of service and an

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<sup>17</sup> 47 C.F.R. § 1.3.

<sup>18</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>19</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>20</sup> *Northeast Cellular*, 897 F.2d at 1166.

imminent wide-spread outage resulting from NSS's failure to pay its underlying suppliers will irrevocably harm Petitioners and their patients.

Absent a waiver, Petitioners face unacceptable uncertainty with regard to their network's reliability and functionality. If this Petition is denied, Petitioners have little choice but to find a replacement solution outside the RHC Program or risk a total network failure. However, procuring services outside the RHC Program would cause Petitioners to incur additional and excessive costs – costs that will hamper their operations and cause an increase in prices to their patients.

As discussed above, the Commission can also take hardship and equity into consideration when determining whether a waiver is appropriate. These considerations are particularly relevant in this case. Again, Petitioners are in a situation solely of NSS's making. They followed the bidding requirements in selecting NSS and underwent a thorough and deliberative vetting process in doing so. In addition, Petitioners have taken swift action in an attempt to identify and rectify the cause of NSS's increasing service quality issues and frequent outages. Fundamental principles of fairness support granting a waiver to Petitioners who are innocent victims of a massive fraud.

Similarly, the sweeping and unprecedented nature of NSS's fraudulent conduct has caused Petitioners to incur a unique and unanticipated hardship. Petitioners rely on the network services supported and provided by NSS in order to provide essential and modern care and services to their patients. Without these services, Petitioners and the communities they serve will suffer. Indeed, even now, the current network reliability is not acceptable or sustainable and is hampering Petitioners' daily operations. Further, all FY 2016 funds are exhausted. Thus, as explained above, Petitioners must obtain a waiver of the bidding rules and obtain a transfer of FY 2016 funds in order to avoid incurring additional costs to remedy this situation. Without a waiver, the current hardship faced by Petitioners will only increase.

Lastly, a waiver of Section 54.503 would not undermine the Commission's policy objectives. Petitioners are aware of and appreciate the value and purpose of the competitive bidding process. Petitioners also appreciate the Commission's reluctance to create potentially unfavorable precedent by granting a waiver of these important requirements. However, given the uniqueness of this situation, Petitioners do not believe that granting their waiver request would create a negative precedent or encourage others to try and bypass the bidding process. Through its NAL and suggested forfeiture, the FCC sent a strong message to providers that fraudulent conduct will be aggressively investigated and prosecuted. Thus, the actions giving rise for the need of the waiver requested herein are unlikely to occur again.

Moreover, the Commission has acknowledged the importance of the RHC Program and the fact that modern and reliable communication's systems are vital to the provision of quality and advanced medical care. The Commission also recognized the damage that NSS's fraud imposes on millions of rural Americans, who, as a result of such fraud, "may end up paying more for medically necessary services or forgoing them altogether."<sup>21</sup> Therefore, granting the instant waiver request advances the aims of the RHC Program, is consistent with Commission policy, and is an important step in undoing the damage done by NSS to the USF, HCPs, and the public at large.

For the reasons set forth herein, good cause exists to grant this Petition.

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<sup>21</sup> See NSS NAL at ¶ 1.

### **III. Conclusion**

Petitioners respectfully request that the Commission grant their Petition for a Waiver of the Competitive Bidding Requirements for good cause shown and grant such other relief as the Commission deems appropriate.

Respectfully Submitted,



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Suite 401  
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Fax: (703) 714-1330

*Counsel for Community Hospital  
Corporation*

Dated: February 3, 2017

## **Exhibit 1**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION**

**Washington, D.C. 20554**

In the Matter of:	)	
	)	WC Docket No. 02-60
Petition of Community Hospital	)	
Corporation, Yoakum Community	)	
Hospital; and Saint Mark's Medical Center	)	
for Waiver of § 54.603		

**AFFIDAVIT OF BRIAN DOERR**

Personally appearing before the undersigned officer duly authorized to administer oaths, Brian Doerr, who, first being duly sworn under oath, deposes and states the following:

1. I, Brian Doerr, am 21 years of age or older and this affidavit is based upon my personal knowledge.

2. I am SVP of Information Technology, Security and Privacy Officer for Community Hospital Corporation ("CHC" or "Company") located in Plano, Texas.

3. I have held a position at CHC for over eight years.

4. I make this Affidavit in support of the Petition for Retroactive Waiver filed by CHC, Yoakum Community Hospital ("YCH") and Saint Mark's Medical Center ("St. Mark's") (collectively the "Petitioners").

5. Established in 1996 and headquartered in Plano, Texas, CHC's sole mission is to help not-for-profit hospitals remain community-operated and governed.



6. CHC provides the resources and experience community hospitals need to improve quality outcomes, patient satisfaction and financial performance.

7. CHC offers a number of comprehensive services that are designed to benefit community hospitals in four key areas – operational performance, financial strength, strategic vision and regulatory compliance. Specifically, CHC offers community hospitals the following core services: ownership models, management services, and consulting services. CHC created and offers two distinct ownership models, one for privately held hospitals and one for publicly governed hospitals.

8. CHC has an ownership interest in three rural/community hospitals, one tertiary hospital, and eleven long term acute care hospitals and provides management and consulting services to over one hundred hospital clients.

9. CHC participated in the Rural Health Care Program as a consortium to procure funding and services for consortium members, YCH, St. Mark's, and the Beaumont, Texas branch of Baptist Hospitals of Southeast Texas (HCP 35987). In addition, the CHC corporate office (HCP 33584) and data center (HCP 39333) likewise received funding through the CHC Consortium.

10. My position with CHC has caused me to be familiar with the operations and management of YCH and St. Mark's.

11. YCH has provided healthcare to the community of Yoakum, Texas since 1922.

12. The 25-bed facility operates as a not-for-profit hospital and is managed by CHC.

13. YCH's patients benefit from the latest medical technology along with comprehensive healthcare delivered by highly skilled physicians, nurses and professional staff. YCH's dedication to providing comprehensive healthcare with compassion, dignity and respect demonstrates its standard of quality care and superior service to its community.

14. YCH is designated as the only Level IV trauma center in the area and provides a broad range of inpatient and outpatient services to meet the evolving health care needs of the surrounding community, which includes laboratory, rehabilitation, imaging, emergency, general medicine, diabetes education, treatment for sleep disorders, surgery and the many medical specialists who schedule patient appointments at the YCH Outpatient Clinic.

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16. St. Mark's provides patients with comprehensive health services, advanced technologies and medical specialists that rival those of major metropolitan institutions.

17. St. Mark's maintains a clinical affiliation with St. David's HealthCare in Austin and is the proud recipient of the TMF Health Quality Institute Silver Award, exemplifying its dedication to continuous quality improvement.

18. St. Mark's is a part of the CHC family of hospitals.

19. In or around May 2011, Petitioners began evaluating their telecommunications needs and resources and elected to participate the Rural Health Care Program administered by the Universal Service Administrative Company (“USAC”).

20. Petitioners applied to become eligible Health Care Providers (“HCP”) and each submitted Form 465 for Funding Year 2011.

21. Petitioners sought to obtain Rural Health Care Program support for necessary Internet and telecommunications services to be used for medical purposes, including, but not limited to, bandwidth for general Internet connectivity and data circuits for sending and receiving medical billing information, files and/or images to and from remote locations, addressing medical administration issues, and telemedicine. Specifically, Petitioners wished to implement a MPLS network solution to help address their telecommunications needs.

22. CHC became an HCP as a consortium and applied for funding on behalf of its members.

23. YCH and St. Mark’s also individually applied for and became HCPs and likewise sought funding.

24. All requested funding related to the central aim of creating a network solution to address their collective needs.

25. After filing their respective FCC Form 465, we received proposals from three different service providers: NSS, TeleQuality, and XO Communications.

26. Petitioners reviewed the bids/proposals using a selection/decision matrix document.

27. Petitioners determined that the proposal provided by TeleQuality was substantially more expensive than those proposed by both NSS and XO Communications.

28. Petitioners did not award the contract to TeleQuality for that reason.

29. When making a determination between the proposals provided by NSS and XO Communications, Petitioners compared a variety of factors and worked with USAC Analyst, Debbi Robinson, to determine the best option.

30. XO Communications provided the lowest priced network. However, one of the conditions of awarding the contract was that the network solution had to be provided on a Tier 1 provider's backbone. Petitioners learned that XO Communications is a Tier 2 provider that relies on paid peering contracts with other carriers. Thus, XO Communications was eliminated from consideration.

31. Petitioners were not confident that XO Communications was capable of delivering a fully meshed, dedicated, high capacity connection to not only the currently proposed locations, but also all potential markets into which they anticipated expanding. Petitioners also required assurances that a packet leaving Dallas, Texas on the ISP's backbone could and would be delivered to Artesia, New Mexico, Yoakum, Texas, or any rural area in the U.S. on that same backbone. If a provider is in a leasing or peering agreement, it cannot maintain the quality of the product and is subsequently at the mercy of whoever is supplying it.

32. Similarly, Petitioners needed assurances that the ISP selected would support and maintain its backbone from end to end. Based on these specific concerns and further reasons highlighted in the matrix provided to USAC, Petitioners' selection committee felt XO Communications did not meet the necessary criteria.

33. As part of the selection process, we also considered the financial stability of all the underlying carriers that submitted information.

34. It was discovered that XO Communications had experienced bankruptcy in the preceding ten years.

35. Only NSS and TeleQuality featured services from underlying carriers in Fortune 500 organizations (CenturyLink-344 and AT&T-12). They were given favorable consideration compared to XO Communications, which was not a Fortune 500 organization.

36. Given all these findings and concerns, doing business with XO Communications seemed to be a high risk.

37. After considering the above factors, Petitioners determined that NSS was best positioned to provide for their immediate network need and potential network growth.

38. Petitioners and NSS executed service contracts on or around August 11, 2011.

39. From 2011 through the present, NSS utilized CenturyLink, Inc. ("CenturyLink") as its underlying provider in order to provide services to Petitioners.

40. Over the past eighteen months, Petitioners have seen a dramatic decline in the support provided by NSS and has experienced a number of outages.

41. NSS apparently removed Petitioners from its automatic outage notifications.

42. Further, NSS's response times to outages and service issues are unacceptable, and NSS refuses to provide information as to the causes of the service

outages. As a result, we often must work with NSS's subcontractor, CenturyLink, directly in order to resolve technical issues.

43. During the most recent outage which occurred on January 25, 2017, all five of Petitioners' CenturyLink circuits managed by NSS went down simultaneously.

44. Petitioners contacted NSS immediately to open a trouble ticket. The first update from NSS came an hour after the trouble ticket was opened and provided no reason for the outage or any estimate of service restoration. Petitioners received the second and last update over an hour after the first update, which also provided nothing in the way of guidance. To date, NSS has never provided Petitioners with a reason or cause for the outage or even a notice that service has been restored.

45. After receiving no assistance from NSS, Petitioners contacted CenturyLink and several CenturyLink partners to see what could be done to restore service as quickly as possible.

46. Petitioners received verbal confirmation from a CenturyLink representative that the outage was due to non-payment by NSS. Petitioners are attempting to obtain written verification of the same from NSS.

47. After experiencing inconsistent service quality from NSS for approximately six months, St. Mark's and YCH elected to initiate a competitive bidding process in order to secure funding to procure services from a new provider that would, in turn, help facilitate the eventual migration away from NSS.

48. Both entities submitted Forms 465 in or around January 2016. However, neither St. Mark's nor YCH received any responsive proposals.

49. After conducting additional research and due diligence, they contacted Hot Spot Broadband (dba Sky Fiber Internet) to investigate whether that company could provide an adequate solutions. St. Mark's and YCH eventually entered into a contract with Hot Spot Broadband in or around December 2016.

50. Both entities sought to have FY 2016 funding applied, but learned that all FY 2016 had been used.

51. Petitioners are prepared to enter into a new bidding process for FY 2017, but they still require a solution to be in place in the interim.

52. Given the severe service quality issues, the risk of continuing outages, and the financial and legal issues facing NSS, Petitioners intend to terminate their contract with NSS.

53. While Petitioners are currently working with CenturyLink to arrive at an emergency and interim solution, they need to implement a replacement to NSS as soon as possible in order to avoid future outages and ensure continuity of critical services. Petitioners do not anticipate that CenturyLink will continue to service the circuits given the current situation

54. Hot Spot Broadband has represented that it can create a temporary solution that would prevent Petitioners from losing network connectivity until such time as a permanent solution can be achieved.

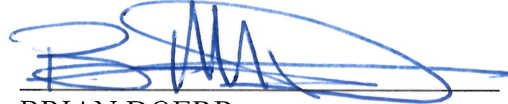
55. This temporary solution requires a waiver of the competitive bidding rules.

56. Without this solution, Petitioners remain at the mercy of NSS and fully expect additional outages to occur in the very near term.

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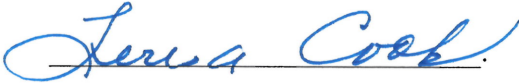


Under penalty of perjury, I hereby affirm that the foregoing statements are true to the best of my knowledge, information and belief.

  
BRIAN DOERR

State of Texas )  
County of Collin ) ss.:

The foregoing instrument was acknowledged before me this 3 day of February, 2017  
by



126563681  
Notary / Registration Number

June 20, 2020  
My Commission Expires

